

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

UNITED STATES OF AMERICA )  
                               )  
v.                           )  
                               ) No. 3:08-CR-126  
NICOLE LYNN TIBBS         ) (Phillips)

ORDER

This matter is before the court on the defendant's motion for an order allowing her to remain on bond pending the appeal of her case [Doc. 35]. The government has responded in opposition [Doc. 378]. For the reasons which follow, the defendant's motion is **DENIED**.

On June 2, 2009, defendant pleaded guilty to two counts of mail fraud. She was sentenced to a term of imprisonment of 33 months on February 22, 2010. Defendant was allowed to remain on bond pending designation to a Bureau of Prisons facility. She is presently scheduled to report on May 11, 2010.

To establish entitlement to release pending appeal, the defendant must show (1) by clear and convincing evidence that she is not likely to flee or pose a danger to the safety of another person or the community, and (2) that the appeal is not for delay and raises a substantial question of law or fact likely to result in reversal, an order for new trial,

a sentence that does not include a term of imprisonment, or a sentence reduced to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process. 18 U.S.C. § 3143(b)(1); *United States v. Chilingirian*, 280 F.3d 704, 709 (6<sup>th</sup> Cir. 2002).

Here, defendant has not demonstrated that her appeal raises a substantial question sufficient to overcome the presumption against release pending appeal. Her motion largely reiterates her earlier objections to the presentence report and her arguments for a sentence of probation, all of which were rejected by the court at sentencing. Therefore, defendant's motion for bond pending appeal [Doc. 35] is hereby **DENIED**.

Defense counsel has informed the court that defendant needs additional time to make arrangements for custody of her ten-year old son and to put her affairs in order before reporting to the Bureau of Prisons. The court will grant defendant an extension of time until **May 25, 2010** to report to the Bureau of Prisons facility.

**IT IS SO ORDERED.**

**ENTER:**

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s/ Thomas W. Phillips  
United States District Judge